

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JUNE 30, 2015

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1506

Introduced by Assembly Member Roger Hernández

(Principal coauthor: Senator Mendoza)

(Coauthors: Assembly Members Dodd and Grove)

*(Coauthors: Senators Hertzberg, Leno, Moorlach, Stone, and
Wieckowski)*

March 4, 2015

An act to amend Sections 2699, 2699.3, and 2699.5 of the Labor Code, relating to ~~employment~~, *employment, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1506, as amended, Roger Hernández. Labor Code Private Attorneys General Act of 2004.

The Labor Code Private Attorneys General Act of 2004 authorizes an aggrieved employee to bring a civil action to recover specified civil penalties, that would otherwise be assessed and collected by the Labor and Workforce Development Agency, on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act provides the employer with the right to cure certain violations before the employee may bring a civil action, as specified. For other violations, the act requires the employee to follow specified procedures before bringing an action.

Existing law requires an employer to provide its employees with specified information regarding their wages, including, among others, the inclusive dates of the period for which the employee is paid and the name and address of the legal entity that is the employer, either semimonthly or at the time of each wage payment and provides that the employer does not have the right to cure a violation of that requirement before an employee may bring a civil action under the act.

This bill would provide an employer with the right to cure a violation of the requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under the act. The bill would provide that a violation of that requirement shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee, as specified. The bill would limit the employer's right to cure with respect to alleged violations of these provisions to once in a 12-month period, as specified. The bill would also delete references to obsolete provisions of law.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2699 of the Labor Code is amended to
- 2 read:
- 3 2699. (a) Notwithstanding any other provision of law, any
- 4 provision of this code that provides for a civil penalty to be
- 5 assessed and collected by the Labor and Workforce Development
- 6 Agency or any of its departments, divisions, commissions, boards,
- 7 agencies, or employees, for a violation of this code, may, as an
- 8 alternative, be recovered through a civil action brought by an
- 9 aggrieved employee on behalf of himself or herself and other
- 10 current or former employees pursuant to the procedures specified
- 11 in Section 2699.3.
- 12 (b) For purposes of this part, "person" has the same meaning
- 13 as defined in Section 18.

1 (c) For purposes of this part, “aggrieved employee” means any
2 person who was employed by the alleged violator and against
3 whom one or more of the alleged violations was committed.

4 (d) For purposes of this part, “cure” means that the employer
5 abates each violation alleged by any aggrieved employee, the
6 employer is in compliance with the underlying statutes as specified
7 in the notice required by this part, and any aggrieved employee is
8 made whole. A violation of paragraph (6) or (8) of subdivision (a)
9 of Section 226 shall only be considered cured upon a showing that
10 the employer has provided a fully compliant, itemized wage
11 statement to each aggrieved employee for each pay period for the
12 three-year period prior to the date of the written notice sent
13 pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

14 (e) (1) For purposes of this part, whenever the Labor and
15 Workforce Development Agency, or any of its departments,
16 divisions, commissions, boards, agencies, or employees, has
17 discretion to assess a civil penalty, a court is authorized to exercise
18 the same discretion, subject to the same limitations and conditions,
19 to assess a civil penalty.

20 (2) In any action by an aggrieved employee seeking recovery
21 of a civil penalty available under subdivision (a) or (f), a court
22 may award a lesser amount than the maximum civil penalty amount
23 specified by this part if, based on the facts and circumstances of
24 the particular case, to do otherwise would result in an award that
25 is unjust, arbitrary and oppressive, or confiscatory.

26 (f) For all provisions of this code except those for which a civil
27 penalty is specifically provided, there is established a civil penalty
28 for a violation of these provisions, as follows:

29 (1) If, at the time of the alleged violation, the person does not
30 employ one or more employees, the civil penalty is five hundred
31 dollars (\$500).

32 (2) If, at the time of the alleged violation, the person employs
33 one or more employees, the civil penalty is one hundred dollars
34 (\$100) for each aggrieved employee per pay period for the initial
35 violation and two hundred dollars (\$200) for each aggrieved
36 employee per pay period for each subsequent violation.

37 (3) If the alleged violation is a failure to act by the Labor and
38 Workplace Development Agency, or any of its departments,
39 divisions, commissions, boards, agencies, or employees, there shall
40 be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an

1 employer for the compensation for any injury to or death of an
2 employee arising out of and in the course of employment.

3 (l) The superior court shall review and approve any penalties
4 sought as part of a proposed settlement agreement pursuant to this
5 part.

6 (m) This section shall not apply to the recovery of administrative
7 and civil penalties in connection with the workers' compensation
8 law as contained in Division 1 (commencing with Section 50) and
9 Division 4 (commencing with Section 3200), including, but not
10 limited to, Sections 129.5 and 132a.

11 (n) The agency or any of its departments, divisions,
12 commissions, boards, or agencies may promulgate regulations to
13 implement the provisions of this part.

14 SEC. 2. Section 2699.3 of the Labor Code is amended to read:

15 2699.3. (a) A civil action by an aggrieved employee pursuant
16 to subdivision (a) or (f) of Section 2699 alleging a violation of any
17 provision listed in Section 2699.5 shall commence only after the
18 following requirements have been met:

19 (1) The aggrieved employee or representative shall give written
20 notice by certified mail to the Labor and Workforce Development
21 Agency and the employer of the specific provisions of this code
22 alleged to have been violated, including the facts and theories to
23 support the alleged violation.

24 (2) (A) The agency shall notify the employer and the aggrieved
25 employee or representative by certified mail that it does not intend
26 to investigate the alleged violation within 30 calendar days of the
27 postmark date of the notice received pursuant to paragraph (1).
28 Upon receipt of that notice or if no notice is provided within 33
29 calendar days of the postmark date of the notice given pursuant to
30 paragraph (1), the aggrieved employee may commence a civil
31 action pursuant to Section 2699.

32 (B) If the agency intends to investigate the alleged violation, it
33 shall notify the employer and the aggrieved employee or
34 representative by certified mail of its decision within 33 calendar
35 days of the postmark date of the notice received pursuant to
36 paragraph (1). Within 120 calendar days of that decision, the
37 agency may investigate the alleged violation and issue any
38 appropriate citation. If the agency determines that no citation will
39 be issued, it shall notify the employer and aggrieved employee of
40 that decision within five business days thereof by certified mail.

1 Upon receipt of that notice or if no citation is issued by the agency
2 within the 158-day period prescribed by subparagraph (A) and this
3 subparagraph or if the agency fails to provide timely or any
4 notification, the aggrieved employee may commence a civil action
5 pursuant to Section 2699.

6 (C) Notwithstanding any other provision of law, a plaintiff may
7 as a matter of right amend an existing complaint to add a cause of
8 action arising under this part at any time within 60 days of the time
9 periods specified in this part.

10 (b) A civil action by an aggrieved employee pursuant to
11 subdivision (a) or (f) of Section 2699 alleging a violation of any
12 provision of Division 5 (commencing with Section 6300) other
13 than those listed in Section 2699.5 shall commence only after the
14 following requirements have been met:

15 (1) The aggrieved employee or representative shall give notice
16 by certified mail to the Division of Occupational Safety and Health
17 and the employer, with a copy to the Labor and Workforce
18 Development Agency, of the specific provisions of Division 5
19 (commencing with Section 6300) alleged to have been violated,
20 including the facts and theories to support the alleged violation.

21 (2) (A) The division shall inspect or investigate the alleged
22 violation pursuant to the procedures specified in Division 5
23 (commencing with Section 6300).

24 (i) If the division issues a citation, the employee may not
25 commence an action pursuant to Section 2699. The division shall
26 notify the aggrieved employee and employer in writing within 14
27 calendar days of certifying that the employer has corrected the
28 violation.

29 (ii) If by the end of the period for inspection or investigation
30 provided for in Section 6317, the division fails to issue a citation
31 and the aggrieved employee disputes that decision, the employee
32 may challenge that decision in the superior court. In such an action,
33 the superior court shall follow precedents of the Occupational
34 Safety and Health Appeals Board. If the court finds that the division
35 should have issued a citation and orders the division to issue a
36 citation, then the aggrieved employee may not commence a civil
37 action pursuant to Section 2699.

38 (iii) A complaint in superior court alleging a violation of
39 Division 5 (commencing with Section 6300) other than those listed
40 in Section 2699.5 shall include therewith a copy of the notice of

1 violation provided to the division and employer pursuant to
2 paragraph (1).

3 (iv) The superior court shall not dismiss the action for
4 nonmaterial differences in facts or theories between those contained
5 in the notice of violation provided to the division and employer
6 pursuant to paragraph (1) and the complaint filed with the court.

7 (B) If the division fails to inspect or investigate the alleged
8 violation as provided by Section 6309, the provisions of subdivision
9 (c) shall apply to the determination of the alleged violation.

10 (3) (A) Nothing in this subdivision shall be construed to alter
11 the authority of the division to permit long-term abatement periods
12 or to enter into memoranda of understanding or joint agreements
13 with employers in the case of long-term abatement issues.

14 (B) Nothing in this subdivision shall be construed to authorize
15 an employee to file a notice or to commence a civil action pursuant
16 to Section 2699 during the period that an employer has voluntarily
17 entered into consultation with the division to ameliorate a condition
18 in that particular worksite.

19 (C) An employer who has been provided notice pursuant to this
20 section may not then enter into consultation with the division in
21 order to avoid an action under this section.

22 (4) The superior court shall review and approve any proposed
23 settlement of alleged violations of the provisions of Division 5
24 (commencing with Section 6300) to ensure that the settlement
25 provisions are at least as effective as the protections or remedies
26 provided by state and federal law or regulation for the alleged
27 violation. The provisions of the settlement relating to health and
28 safety laws shall be submitted to the division at the same time that
29 they are submitted to the court. This requirement shall be construed
30 to authorize and permit the division to comment on those settlement
31 provisions, and the court shall grant the division's commentary
32 the appropriate weight.

33 (c) A civil action by an aggrieved employee pursuant to
34 subdivision (a) or (f) of Section 2699 alleging a violation of any
35 provision other than those listed in Section 2699.5 or Division 5
36 (commencing with Section 6300) shall commence only after the
37 following requirements have been met:

38 (1) The aggrieved employee or representative shall give written
39 notice by certified mail to the Labor and Workforce Development
40 Agency and the employer of the specific provisions of this code

1 alleged to have been violated, including the facts and theories to
2 support the alleged violation.

3 (2) (A) The employer may cure the alleged violation within 33
4 calendar days of the postmark date of the notice. The employer
5 shall give written notice by certified mail within that period of
6 time to the aggrieved employee or representative and the agency
7 if the alleged violation is cured, including a description of actions
8 taken, and no civil action pursuant to Section 2699 may commence.
9 If the alleged violation is not cured within the 33-day period, the
10 employee may commence a civil action pursuant to Section 2699.

11 (B) (i) Subject to the limitation in clause (ii), no employer may
12 avail himself or herself of the notice and cure provisions of this
13 subdivision more than three times in a 12-month period for the
14 same violation or violations contained in the notice, regardless of
15 the location of the worksite.

16 (ii) No employer may avail himself or herself of the notice and
17 cure provisions of this subdivision with respect to alleged violations
18 of paragraph (6) or (8) of subdivision (a) of Section 226 more than
19 once in a 12-month period for the same violation or violations
20 contained in the notice, regardless of the location of the worksite.

21 (3) If the aggrieved employee disputes that the alleged violation
22 has been cured, the aggrieved employee or representative shall
23 provide written notice by certified mail, including specified
24 grounds to support that dispute, to the employer and the agency.
25 Within 17 calendar days of the postmark date of that notice, the
26 agency shall review the actions taken by the employer to cure the
27 alleged violation, and provide written notice of its decision by
28 certified mail to the aggrieved employee and the employer. The
29 agency may grant the employer three additional business days to
30 cure the alleged violation. If the agency determines that the alleged
31 violation has not been cured or if the agency fails to provide timely
32 or any notification, the employee may proceed with the civil action
33 pursuant to Section 2699. If the agency determines that the alleged
34 violation has been cured, but the employee still disagrees, the
35 employee may appeal that determination to the superior court.

36 (d) The periods specified in this section are not counted as part
37 of the time limited for the commencement of the civil action to
38 recover penalties under this part.

39 SEC. 3. Section 2699.5 of the Labor Code is amended to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to incentivize prompt resolution of disputes over itemized wage statements under Part 13 (commencing with Section 2698) of Division 2 of the Labor Code arising from certain specified claims under Section 226 of the Labor Code, it is necessary that this act take effect immediately.